IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9902 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAURASHTRA EMPLOYEES UNION

Versus

SUB DIVISIONAL OFFICER

Appearance:

MR MUKESH H RATHOD for Petitioner

MR BIPIN I MEHTA for Respondent No. 1

SERVED BY RPAD - (N) for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 08/02/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India though styled as one under Articles 226 and 227 of the Constitution of India.

2. The petitioner herein is a registered trade union, which seeks to espouse the cause of one of its workmen. The facts and dates relevant to the present controversy are not in dispute. The workman was engaged as a casual labourer by the employer on 1st January 1986,

and as per the assertions of the workman, he was terminated with effected from 31st August 1988. Thereafter the workman remained silent and complacent until 15th April 1998 when he first filed a complaint to the Conciliation Officer. The Failure Report dated 29th June 1998 was filed by the Assistant Labour Commissioner (Adipur-Kutch), which was received by the relevant Ministry on 7th July 1998. By an order passed by a concerned officer under the provisions of section 10(1) of the Industrial Disputes Act, it was found that the Ministry does not consider the dispute fit for making a reference. It is pertinent to note that this order which is the subject matter of challenge in the present petition is not an order on merits of the dispute, and does not refuse to make a reference on any grounds material to or arising from the dispute, but the same has been refused only on the ground that the dispute has been raised after a lapse of 10 years without justifiable reason for the long delay.

3. It is also pertinent to note on the factual aspects of the matter that this delay of 10 years is firstly admitted. Secondly, this is a delay between the date of alleged termination and the first complaint filed by the workman before the Conciliation Officer in this regard. However, the most significant factor is that no justification whatsoever has been given or even attempted to be given by the workman for this delay. This justification is not even attempted either before the Conciliation Officer or even in the present petition.

4. The crux of the matter, therefore, in the present petition is as to whether a reference can be refused to be made only on the ground of delay dehors the merits of the dispute. Learned counsel for the petitioner has sought to rely upon a recent decision of the Supreme Court in the case of Ajaib Singh Vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (AIR 1999 SC 1351). Learned counsel for the petitioner seeks to place particular emphasis on the observations made in para 10 of the said decision. The relevant observations, however, only emphasise that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to proceedings under the Act, and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone (emphasis supplied). Further observations in the same

paragraph are to the effect that even in a case where the delay is shown to be existing, the Tribunal, Labour Court or board, dealing with the case can appropriately mould the relief by declining to grant backwages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the backwages instead of full backwages.

5. The aforesaid observations must be read in the light of the context of the controversy before the Supreme court, and in the light of the issues which the Supreme Court was required to consider in the said case. It is material to note that the Supreme Court has in the case of C.I.T. Vs. Sun Engg. Works (1992(4) SCC 363-Para 39), following its earlier decision in the case of Madhavrao Scindia (1971(1) SCC 85), held that the decisions of the Supreme Court must be read in the context of the controversy before it, and cannot be read out of context and without reference to the issues involved in the decision sought to be interpreted and applied to other cases.

5.1 It is for this reason and on this principle that I am of the opinion that the observations made in para 10 of the said decision would no doubt apply with full force to all matters which are already before the Labour Court or the Tribunal, and would apply with full force where the matter is pending adjudication on facts and merits. The essential question would thus be whether the delay can defeat the pending reference itself as non-maintainable. It is only in this context that the Supreme Court answered the question in the negative by holding and explaining in the said decision that merely on the ground of delay the reference could not be defeated, and that it was it was open to the concerned court or Tribunal to mould appropriate relief in the light of the delay.

5.2 It may be noted that there is a real difference between a pending reference and one yet to be made. In a pending reference the focus is on adjudication on merits, where the question of delay in making the reference is only one of the considerations, and in case of gross delay, the equities can be modulated by regulating or refusing backwages. However, when a reference is being contemplated under section 10(1) of the I.D. Act, the question is whether the matter deserves adjudication on merits at all, and it is here that the question of gross delay assumes prime importance. This distinction may appear to be a fine and subtle distinction, but is

nevertheless real. The question raised here, therefore, requires to be examined in that perspective.

6. The short question here is whether the making of a reference can be denied on the ground of inordinate delay, particularly where no justification has been established or even offered.

6.1 In this context a decision of this Court in the case of Hassam Noor Mohmed Vs. State of Gujarat & Ors. in Special Civil Application No.8254 of 1995, decided on 31st January 1996 (1996(2) GLH 149) is very relevant.

6.2 In para 6 of the said decision this Court interpreted the decision of the Supreme Court delivered by the Constitution Bench of five Judges in the case of State of Bombay Vs. K.P. Krishnan (AIR 1960 SC page 1223) wherein it was clearly observed that though the consideration of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference, it would not be wholly irrelevant or extraneous consideration under the guise of expediency and that it may be open to the Government (in considering the question of expediency) to enquire whether the dispute raises a claim which is very stale or which is opposed to the provisions of the Act, or is inconsistent with any agreement between the parties and if the Government comes to the conclusion that the dispute suffers from infirmities of this character, it may refuse to make the reference. Thus the Constitution Bench of five Judges of the Supreme Court were also of the view that the claim if found to be a stale claim, is certainly of such character (by having such infirmity) on which a reference can be refused by the appropriate government. The decision of the supreme Court in the case of State of Bombay (supra) has also been followed by the Madras High Court and discussed in para 7 of this court's decision in the case of Hassam Noor Mohmed (supra).

7. It is thus found that the Supreme Court laid down in the aforesaid decision that in case the claim made is patently frivolous or is clearly belated, the appropriate government may refuse to make a reference. The principle is therefore clearly discernible, that in case of a clearly belated claim, the appropriate Government may refuse to make a reference.

7.1 The same principle has been reiterated by the Supreme Court in its decision of V. Veeranjan and others Vs. Government of Tamil Nadu and others (AIR 1987 SC

695).

7.2 This High Court has, while discussing these principles in the case of Hassam Noor Mohmed (supra) has also taken into consideration other decisions of the Supreme Court, which I need not reiterate once again.

8. Learned counsel for the petitioner, however, sought to place reliance upon a Division Bench judgement of this Court in the case of Mahesh Ramdin Knojya Vs. Manager, Air India and Another (1996(2) GLH UJ 11). It is pertinent to note that this was a decision rendered in a Letters Patent Appeal arising from a decision of a Single Judge of this court. This decision firstly lays down a principle that the order refusing the reference was an order which in substantial terms decided the merits of the dispute, and obviously this is not permissible in law. The Division Bench, while dealing with the controversy, also had occasion to observe in para 6 of the judgement as under:

> "It is well settled by now that reference of a dispute cannot be denied except on limited grounds which need not be cited in this order as there is no dispute about the same".

These observations also indicate that a reference can certainly be refused on well recognised grounds, which grounds have not been dealt with by the Division Bench in the said decision, probably because they were not in controversy.

9. What is material and requires to be noted is that the said decision of the Division Bench was directly concerned with the decision of a learned Single Judge of this court in a petition under Article 226 and 227 of the Constitution of India, where the learned Single Judge had, on the facts of the case, found that inordinate delay even in filing the petition before this court after the reference was refused. It was in this context that the Division Bench thought it fit to observe in para 7 of the decision as under:

> "Though there is a delay as held by the learned single Judge, we are otherwise satisfied that the appellant was employed in small job of handyman and in that view of the matter, deserves some consideration. In addition a statement was made on behalf of the appellant by his counsel Ms. Jaishree C. Bhatt that in the event the Tribunal decides the Reference in favour of the appellant,

> the appellant would not claim backwages and he would be content with wages from the date of his retrenchment in the event it is so ordered" (emphasis supplied).

Firstly I fail to appreciate how this statement made by the learned counsel in that matter amounts to a gracious concession at all. In any case what matters is that in the matter under consideration before the Division Bench, the question was of delay in making a complaint to the Conciliation Officer, and also the delay in filing a petition which came to be decided by a learned Single Judge of this Court. It was in this context of this delay that the Division Bench found that the principles of Limitation Act and particularly Article 137 would have no application to the proceedings under I.D. Act. But in my opinion the Bench was largely impressed by the concession (sic?) granted by the workman as to giving up the claim for backwages. In my opinion, therefore, the said decision of the Division Bench is on the facts of that case, and would not be of any assistance to the present petitioner on the principle which is in controversy herein.

10. In the premises aforesaid, I am satisfied that the concerned authority had the power under section 10(1) of the I.D. Act to refuse to make a reference only on the ground of inordinate delay of 10 years, particularly where no justification for delay has either been substantiated or even offered.

11. I therefore see no substance in the present petition and the same is therefore dismissed. Notice is discharged with no order as to costs.

[Y.B. BHATT J.]

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